

**RESOLUTION NO. 07-022**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN OWNER-INSTALLED SERVICE AGREEMENT WITH COMCAST OF SOUTH FLORIDA I, INC. TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN CABLE TELEVISION SERVICE TO CUSTOMERS RESIDING IN THE 300-UNIT ELDERLY HOUSING COMPLEX TO BE LOCATED AT 2659 WEST OKEECHOBEE ROAD, HIALEAH, FLORIDA IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1" FOR A TERM OF 5 YEARS SUBJECT TO TWO SUCCESSIVE 5-YEAR RENEWALS UPON AGREEMENT OF THE PARTIES.

**WHEREAS**, the City of Hialeah finds that it is in its best interest to allow Comcast of South Florida I, Inc. to extend its cable television distribution system to service residents of the 300-unit elderly housing complex to be located at 2659 West Okeechobee Road, Hialeah, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

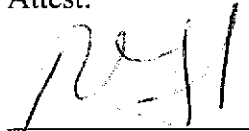
**Section 1:** The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into an Owner-Installed Service Agreement with Comcast of South Florida I, Inc. to construct, install, operate and maintain cable television service to customers residing in the 300-unit elderly housing complex to be located at 2659 West Okeechobee Road, Hialeah, Florida in substantial

from as attached hereto and made a part hereof as Exhibit "1" for a term of 5 years subject to two 5-year renewals upon agreement of the parties.

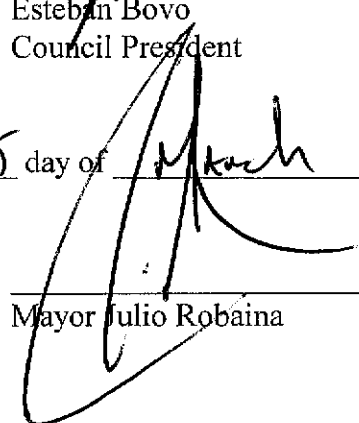
PASSED AND ADOPTED this 13 day of March, 2007.

  
\_\_\_\_\_  
Esteban Bovo  
Council President

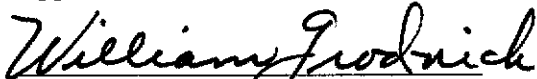
Attest:

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

Approved on this 15 day of March, 2007.

  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
William M. Grodnick, City Attorney

s:/wmg/legisl/reso-07/comcastcableK300units.doc

Resolution was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".

**SERVICE AGREEMENT  
OWNER INSTALLED SERVICE AGREEMENT**

THIS SERVICE AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of February, 2007 by and between Comcast of South Florida I, Inc. (the "Company"), whose address is 18601 NW 2<sup>nd</sup> Avenue Miami Florida 33169 and City of Hialeah (the "Owner") who owns or has control over certain real estate and improvements thereon located at 2659 W Okeechobee Road Hialeah Florida 33013 (the "Premises"), consisting of 300 residential units.

The Company has been granted by the City of Hialeah (the "City" or (the "Franchise Authority") a franchise to construct and operate a cable communications system in the City. The Owner desires to provide broadband services to the Premises, including, but not limited to, cable television service (the "Services") and the Company is willing to operate a cable communications system for such purposes on the Premises in accordance with the terms and conditions below.

NOW, THEREFORE, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. Owner Wiring. The Owner has installed all cable home and cable home run wiring necessary for the Company to distribute the Services to the Premises (the "Owner Wiring"). The Owner represents and warrants that the Owner Wiring is compatible with the Company Wiring. The ownership of all parts of the Owner Wiring installed by the Owner shall be and will remain the personal property of the Owner.
2. Company Wiring. The Company will extend its distribution system to a mutually agreed upon demarcation point(s) on the Owner's property and will install the necessary equipment and wiring, other than the Owner Wiring, that in conjunction with the Owner Wiring is necessary to provide the Services to the Premises ("Company Wiring"). The ownership of all parts of the Company Wiring installed by the Company shall be and will remain the property of the Company. The Company shall have the right to interconnect with and use any telephony inside wiring facilities, cross connect facilities and other telephony-related facilities which may become necessary or useful, for the provision of the Company's Services to the residents, whether or not such facilities are owned, installed, controlled or maintained by the Company.
3. The System. The System will consist of the Owner Wiring and the Company Wiring. At no time during the term hereof shall the Owner or any third party have the right to use the System or any portion thereof for any purpose.

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4. Access. The Owner will allow Company employees to enter all common areas of the Premises for the purposes of auditing, selling or disconnecting service, installing, maintaining, repairing, replacing or removing Company Wiring equipment and apparatus connected with the provision of the Services and will use reasonable efforts to assure the Company access to any parts of the Premises over which it does not have control for the same purposes. Owner will supply the names and unit numbers of residents at reasonable intervals. Owner shall cooperate with the Company to prevent (i) the unauthorized possession of converters or channel selectors and (ii) the unauthorized reception of the Services.

5. Maintenance. If Owner fails to maintain Owner Wiring in accordance with the Company's technical specifications, the Company may, at its option (i) suspend delivery of the Services to the Premises until the required repairs are made or (ii) if repairs are not made within five (5) days after notice is provided by the Company, repair the Owner Wiring as necessary and charge Owner for all materials and labor expended by Company.

6. Delivery of Services. The Owner has the authority to grant and does hereby grant to the Company during the term hereof the -exclusive right to construct, install, operate and maintain the System on the Premises (whether by cable, satellite, microwave or otherwise) and to deliver the Services to the Premises, unless otherwise required by applicable law.

7. Fees and Charges for Services. The terms, conditions, charges and fees for the Services provided to residents at the Premises shall be contained in contracts between the Company and individual residents. The Owner assumes no liability or responsibility for service charges contracted for by residents. All billing and collections from residents will be accomplished by the Company.

8. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. The Company will maintain a local or toll-free telephone number which will be available to its subscribers 24 hours a day, seven days a week. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

9. Interference. Neither the Owner nor anyone operating on its behalf will tap or otherwise interfere with the Company Wiring for any purposes. Notwithstanding anything else in this Agreement to the contrary, the Company shall not interfere with the right of an individual resident to install or use his own private reception device, provided, however, that should any device or any facility belonging to a resident (or Owner) not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue service to the Premises, or, at the Company's discretion, the individual unit, until such non-conformance is cured by the Owner or resident as the case may be.

10. Term. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Owner and the Company and their respective successors and assigns for a term of five (5) years. This Agreement may be renewed for two successive five-year renewals at the request of the Company. If the Company requests such five (5) year renewal and is not in default of the Agreement for which all cure periods have lapsed, then the City shall agree to such renewal.

11. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Owner with a certificate evidencing such insurance.

12. Indemnification. The Company shall indemnify, defend and hold the Owner harmless from any and all claims, damage or expense arising out of the actions or omissions of the Company, its agents and employees with respect to the installation, operation, maintenance or removal of the Company Wiring and the Services provided to residents at the Premises pursuant to this Agreement. The Owner shall indemnify, defend and hold the Company harmless from any and all claims, damage or expense arising out of the actions or omissions of the Owner, its agents and employees but not limited to the installation, operation, maintenance or removal of the Owner Wiring.

### 13. Limitation of Liability

THE COMPANY SHALL NOT BE LIABLE TO OWNER FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, OR DOWN TIME COST, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

### 14. Termination.

a) Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event the defaulting party fails to do so within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.

b) Loss of Franchise. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company's franchise with the Franchise Authority or any renewal thereof ceases to be in effect.

15. Removal of System. Upon termination of this Agreement for any reason, the Company shall have a period of six (6) months in which it shall be entitled but not required to remove the Company Wiring. The Company shall promptly repair any damage to the Premises occasioned by such removal.

16. Dispute Resolution. All disputes under this Agreement shall be submitted to, and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with multi-channel video program distribution systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with multi-channel video program distribution systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction.

17. Miscellaneous.

a) Force Majeure. The Company shall not be liable for failure to construct or to continue to operate the Company Wiring during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.

b) Assignability; Binding Effect. This Agreement may be assigned by either party. The assignee shall agree in writing to be bound by all the terms and conditions hereof. In the event the Owner sells, assigns, transfers or otherwise conveys the Premises to a third party, the Owner shall give the Company prior written notice of such change of ownership or control. Owner shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. This Agreement shall be binding upon the parties and their respective successors and assigns.

c) Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.

d) Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

e) Recording. The Company may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.

f) Notices. All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to Owner:

City of Hialeah  
900 E 56<sup>th</sup> Street  
Hialeah Florida 33013  
Attn.: City Manager

If to the Company:

Comcast  
18601 NW 2<sup>nd</sup> Avenue  
Miami Florida 33169  
Attn.: Commercial Development

With a copy to:

Comcast Cable Communications, LLC  
1500 Market Street  
Philadelphia, PA 19102  
Attn.: General Counsel

g) Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

h) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

WITNESS/ATTEST:

OWNER: City of Hialeah

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

By: \_\_\_\_\_  
Name: Julio Robaina  
Title: Mayor

ATTEST:

Comcast of South Florida I, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Tom Autry  
Area Vice President of Miami Dade County and the  
Florida Keys  
18601 NW 2<sup>nd</sup> Avenue  
Miami Florida 33169  
305-770-5355

Approved as to form and  
legal sufficiency:

  
William M. Grodnick  
City Attorney



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007  
by \_\_\_\_\_, of \_\_\_\_\_, on  
(Print Name)

behalf of the corporation. He/she is (personally known to me) or (has presented  
\_\_\_\_\_ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name) Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007  
by Tom Autry Area Vice President, of Comcast of South Florida I, Inc., on behalf of the  
corporation. He is personally known to me and did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name) Notary Public

My Commission expires: \_\_\_\_\_